

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AVERY ALLEN CHURCH JR.,

Case No. 2:18-cv-00053-JCM-CWH

Plaintiff

ORDER

v.

NEVADA DEPARTMENT OF
CORRECTIONS et al.,

Defendants

I. DISCUSSION

Plaintiff seeks an extension of time to file his second amended complaint because he is housed in a Connecticut prison and has no access to Nevada legal materials. (ECF No. 12). The Court grants the motion for extension of time. Plaintiff shall file his second amended complaint on or before Friday, March 15, 2019. If Plaintiff fails to file a timely second amended complaint by this date, this action shall proceed immediately against Defendants Logan, Padilla, and Lozano (Count II – failure to protect) only. (See ECF No. 11 at 17). The Court will not grant any further extensions of time for Plaintiff to file a second amended complaint.

Plaintiff also has filed a motion for appointment of counsel. (ECF No. 13). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.* In the instant case, the Court does not find exceptional circumstances that warrant the

1 appointment of counsel. The Court denies the motion for appointment of counsel.

2 **II. CONCLUSION**

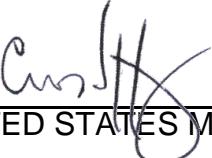
3 For the foregoing reasons, it is ordered that the motion for extension of time (ECF
4 No. 12) is granted.

5 It is further ordered that Plaintiff shall file his first amended complaint on or before
6 Friday, March 15, 2019.

7 It is further ordered that, if Plaintiff fails to timely file his second amended complaint,
8 this action shall proceed immediately against Defendants Logan, Padilla, and Lozano
9 (Count II – failure to protect) only.

10 It is further ordered that the motion for appointment of counsel (ECF No. 13) is
11 denied.

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13 DATED: February 7, 2019

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16 UNITED STATES MAGISTRATE JUDGE

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